

EXHIBIT C

Thomas F. Maguire, PG, LSP, LEP

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary :MDL NO. 1358 (SAS)
Butyl Ether ("MTBE"):
Products Liability :
Litigation :

In Re: City of New York

May 4, 2009

Videotaped Deposition of
THOMAS F. MAGUIRE, PG, LSP, LEP, held
in the law offices of New York City
Law Department, 100 Church Street, New
York, New York, beginning at approximately
a.m., before Ann V. Kaufmann, a
Registered Professional Reporter, Certified
Realtime Reporter, Approved Reporter of the
U.S. District Court, and a Notary Public.

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1 (Above-described document
2 marked as Maguire Exhibit 3.)

3 BY MR. SHER:

4 Q. Have you seen this document
5 before?

6 A. Yes, I have.

7 Q. Is this one of the reports
8 to which you responded in your -- in
9 Exhibit 2?

10 A. Yes.

11 Q. I'm going to hand you what
12 we've marked as Maguire Exhibit No. 4.
13 This is the expert rebuttal report of
14 David B. Terry, dated March 23, 2009.

15 (Above-described document
16 marked as Maguire Exhibit 4.)

17 BY MR. SHER:

18 Q. You have seen this report
19 before?

20 A. Yes, I have.

21 Q. This report was not one to
22 which you responded in your -- in
23 Exhibit 2 because you hadn't received it
24 yet; is that right?

1 A. That's correct.

2 Q. Going back to -- well,

3 let's continue on so we have the body.

4 We premarked Exhibit 5, which I'm going

5 hand you. This is the expert report of

6 Donald K. Cohen and Marnie A. Bell,

7 dated February 7, 2009. Is this one of

8 the reports to which you responded in

9 your Exhibit 2?

10 A. Yes.

11 (Above-described document

12 marked as Maguire Exhibit 5.)

13 BY MR. SHER:

14 Q. And let's mark as No. 6,

15 I'm going to hand you the rebuttal

16 report of Donald K. Cohen dated March

17 23, 2009.

18 (Above-described document

19 marked as Maguire Exhibit 6.)

20 BY MR. SHER:

21 Q. Have you seen this before?

22 A. Yes, I have.

23 Q. And you could not have

24 responded to this in Exhibit 2 because

1 Q. No, you didn't bring the
2 documents?

3 A. I brought documents, but
4 they don't relate to additional work.

5 Q. Okay. We will come back to
6 that in a moment. Can you describe for
7 me the additional work that you've done
8 since preparing your report on specific
9 wells and stations, Exhibit 2?

10 A. Well, I have reviewed the
11 rebuttal report prepared by Mr. Terry,
12 reviewed the rebuttal report prepared by
13 Cohen and Bell. I have reviewed the
14 modeling files produced by Mr. Terry and
15 the modeling files produced by, again,
16 Cohen and Bell.

17 Q. And have you developed
18 opinions with respect to the rebuttal
19 reports by Mr. Terry?

20 A. Not presently, no.

21 Q. You have no opinions about
22 Mr. Terry's rebuttal report?

23 MR. MCGILL: Object to the
24 form.

1 A. I have not formulated any
2 opinions, as I sit here right now, yet.

3 Q. Have you formed any
4 opinions with respect to the rebuttal
5 report of Mr. Cohen?

6 A. Same. I have reviewed it.
7 I have not formulated any opinions as I
8 sit here right now.

9 Q. Have you formed any
10 opinions with respect to the modeling
11 files produced to you or that you
12 obtained that Mr. Terry provided?

13 A. As I sit here right now, I
14 have not formulated any opinions yet.

15 Q. Have you formulated any
16 opinions with respect to the modeling
17 files from Mr. Cohen?

18 A. Same response. I am in the
19 process of reviewing those. I have not
20 formulated any opinions as I sit here
21 right now.

22 Q. Do I take it correctly that
23 you have ongoing work with respect to
24 the rebuttal reports and the modeling

1 Mr. Cohen?

2 A. No.

3 Q. Have you been asked to
4 review those by anybody?

5 A. I don't know if I was asked
6 to review them, but I have reviewed
7 them.

8 Q. How much time have you
9 spent reviewing the rebuttal reports of
10 Mr. Terry?

11 A. Just the physical time it
12 takes to review the -- to read the
13 reports, but there are attendant files,
14 specifically modeling files, that are
15 quite voluminous and that's the work
16 that's ongoing presently that I'm
17 conducting.

18 Q. You are referring to the
19 modeling files?

20 A. Yes, reviewing the modeling
21 files and evaluating those.

22 Q. And about how much time
23 have you spent so far reviewing the
24 modeling files of Mr. Terry?

1 would want to consider.

2 Q. Aside from the work that
3 you are undertaking now in response to
4 Mr. Terry and Mr. Cohen's rebuttal
5 reports that you have described earlier,
6 have you done any modeling in connection
7 with this case of your own?

8 A. No.

9 Q. Has your firm done any
10 modeling?

11 A. No.

12 Q. Did you attempt to run
13 Mr. Terry's or Mr. Cohen's models in any
14 way?

15 A. Yes, I have run them.

16 Q. Did you do that other than
17 as part of your work in response to the
18 rebuttal report?

19 A. No. Just to be clear, I
20 don't want it to -- I don't want you to
21 have the impression that the only work
22 I'm doing is in response to the rebuttal
23 report. That's one aspect of what I'm
24 doing, but I'm -- the majority of the

1 work that I'm doing is reviewing these
2 modeling files that were produced by
3 Mr. Terry and Cohen and Bell after my
4 report was issued, almost a month
5 after. So I now have an opportunity to
6 go back and look at those. And that was
7 an issue I raised in my report, that
8 given the nature of Mr. Terry's report
9 and the nature of the Cohen and Bell
10 report that were short on details with
11 respect to the modeling exercise, the
12 specifics of the modeling exercise and
13 the applications of the model, and not
14 having the opportunity to look at the
15 modeling files, I reserved opinions or
16 my right to formulate opinions with
17 respect to any detailed analysis I would
18 conduct of those modeling files. So a
19 lot of what I'm doing is now is
20 reviewing those modeling files. Some of
21 those files do pertain to the rebuttal
22 report. Some are just the underlying
23 files that were ultimately produced for
24 Mr. Terry and Cohen and Bell's original

1 required by the federal regulations to
2 understand what release sites exist in
3 the source water zone for your well,
4 what the potential for those source
5 water sites or release sites in that
6 source water zone to affect your pumping
7 well. Doing a more rigorous analysis
8 than I think was done by Mr. Terry in
9 this case. Those would be some things I
10 would suggest doing.

11 Q. More rigorous in what
12 sense?

13 A. In my opinion, and again
14 this is subject to further review,
15 Mr. Terry employs a number of techniques
16 that likely overstate the contaminant
17 mass in the aquifer and/or overstate the
18 mass flux at individual source sites.

19 Q. And this is work that's
20 still ongoing for you?

21 A. Yes.

22 MR. SHER: Let's go off the
23 record.

24 THE VIDEOGRAPHER: We're

1 going off the record. The time is

2 3:03 p.m.

3 (Recess.)

4 THE VIDEOGRAPHER: We're

5 back on the record. The time is

6 3:07 p.m.

7 MR. SHER: We had a colloquy

8 while we were off the record about

9 additional questions for Mr. Maguire and

10 I'm going to make a stab at summarizing

11 our respective -- or at least my

12 position and then Mr. McGill can state

13 his.

14 There are a number of areas

15 that I focused on today where the

16 response from the witness has been, I'm

17 still reviewing modeling-related

18 materials and I haven't yet formulated

19 opinions on those and I am continuing to

20 work. And those have been with respect

21 to both his discussion of the model

22 themselves and the modeling files

23 themselves and with respect to some of

24 the site-specific issues that we've

1 touched on with the three sites that we
2 discussed in relation to Station 6.

3 I don't want to put us
4 through another day and a half of site-
5 specific discussions based on capture
6 zones that the witness is still
7 analyzing, for example. So I am
8 prepared to adjourn today, reserving our
9 rights when he finishes his work to come
10 back and visit those issues with him at
11 the appropriate time.

12 MR. MCGILL: On behalf of
13 Exxon Mobil, we would reserve our right
14 to object to any questions based on
15 opinions expressed up to this point, but
16 we understand the City's position. So
17 we're reserving all objections.

18 MR. SHER: So with all that
19 said, I think we're done for today.

20 THE VIDEOGRAPHER: We're
21 going off the record. The time is
22 3:08 p.m. This is the end of tape 4 of
23 the deposition of Thomas F. Maguire.

24 (Witness excused.)